(2)

NO. 97-7597

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

PATRICK KNOWLES,

Petitioner

vs.

STATE OF IOWA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE IOWA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Respectfully Submitted,

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Knowles
v.
Iowa

QUESTIONS PRESENTED FOR REVIEW

Can a state, consistent with the Fourth Amendment, enact a statute conferring to police a blanket authorization to conduct a full-blown search of a motor vehicle upon issuance of a traffic or equipment citation?

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State v. Knowles, 569 N.W.2d 601 (Iowa 1997).

JURISDICTION

The Iowa Supreme Court entered its decision on October 22, 1997. Jurisdiction of this Court is conferred by 28 U.S.C. § 1257(a). This petition is timely filed under Supreme Court Rule 13.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Fourth Amendment to the United States Constitution

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Iowa Code section 805.1(1) (1997)

Except for an offense for which an accused would not be eligible for bail under section 811.1 or a violation of section 708.11, a peace officer having grounds to make an arrest may issue a citation in lieu of making an arrest without a warrant, or if a warrantless arrest has been made, a citation may be issued in lieu of continued custody.

Iowa Code section 805.1(4) (1997)

The issuance of a citation in lieu of arrest or in lieu of continued custody does not affect the officer's authority to conduct an otherwise lawful search.

STATEMENT OF THE CASE

Facts and Course of Proceedings

On March 9, 1996, Patrick Knowles was operating his motor vehicle in the city of Newton, Iowa, and was pulled over for speeding. (Suppression Hearing Tr. pp. 5-6; App. pp. A-16 - A-17). The police officer approached Knowles's car, requested his license, and returned to his patrol car. (Suppression Hearing Tr. pp. 9-10; App. pp. A-20 - A-21). A check determined that his license was valid and there were no warrants for his arrest. (Suppression Hearing Tr. pp. 9-10; App. pp. A-20 - A-21). After issuing a speeding citation, the officer detained Knowles and proceeded to thoroughly search both his person and the passenger compartment of his vehicle. (Suppression Hearing Tr. pp. 10-11; App. pp. A-21 - A-22). The officer located marijuana and a pipe, and Knowles was then placed under arrest. (Suppression Hearing Tr. p. 8; App. p. A-19).

The State charged Knowles with the offenses of possession of marijuana and keeping marijuana in a motor vehicle. Knowles filed a motion to suppress under the Fourth Amendment to the United States Constitution, challenging the search and admissibility of the marijuana and pipe. (Motion to Suppress; App. p. A-10).

At the evidentiary hearing, the arresting officer testified that he had no probable cause or suspicion that Knowles was involved in any criminal activity nor did he consent to the search of his person or his automobile. (Suppression Hearing Tr. pp. 8-10; App. p. A-19 - A-21). The officer gave the following justification for his actions: "I wrote up the

citation and waited for Officer Springer to come and assist me, then went back up to Mr. Knowles's vehicle, issued him the citation, and explained to him that I had a right to search him and his vehicle incident to the citation." (Suppression Hearing Tr. p. 10; App. p. A-21). Following the hearing, the court denied the motion to suppress. (Ruling on Motion to Suppress; App. p. A-6).

The court found Knowles guilty on both offenses and was sentenced to concurrent terms of 90 days imprisonment on each charge. (Judgment Entries; App. p. A-8).

Knowles appealed the denial of the suppression motion to the Iowa Supreme Court, challenging the search under the Fourth Amendment and the constitutionality of Iowa's statute, section 805.1(4), to the extent that it authorizes a search incident to a citation. (Appellant's Brief; App. p. A-30).

In a 5 to 4 decision, the Iowa court affirmed the convictions, finding initially that the search was justified solely on the authority conferred by Iowa Code section 805.1(4), and then holding that a vehicular search incident to a traffic citation is constitutionally permissible and the statute is therefore valid under the fourth Amendment. (Opinion of the Iowa Supreme Court; App. p. A-1).

ARGUMENT

There are three justifications for granting a writ of certiorari: First, the Iowa statute authorizing a motor vehicle search incident to issuance of a traffic citation violates the

Fourth Amendment; second, Iowa is the only state or federal jurisdiction to authorize a search incident to citation, and a significant number of jurisdictions have specifically found the practice to violate the Fourth Amendment; and third, Iowa's blanket authorization to search a motor vehicle based on issuance of a traffic citation is arbitrary and almost certainly invites police to utilize the power in a discriminatory manner.

1. Search Incident to Citation Violates the Fourth Amendment.

Iowa law permits a police officer to make an arrest for a traffic violation. Iowa Code § 804.7 (1997). The police officer, however, has discretion to issue a citation in lieu of arrest. *Id.* § 805.1(1). If the officer issues a citation, he or she is authorized by statute to conduct an "otherwise lawful search." *Id.* § 805.1(4). The Iowa Supreme Court has interpreted this statutory scheme to allow a search without an arrest whenever the officer "could have" made an arrest. *State v. Doran*, 563 N.W.2d 620, 623 (Iowa 1997).[1] This includes any traffic infraction: "If the officer is legally permitted and objectively authorized to make an arrest, he is, for that reason alone, also authorized to make the search." *Id.* The holding is an unprecedented expansion of Fourth Amendment jurisprudence.

This Court has held that an officer may search a defendant's person incident to a lawful custodial arrest, even if the arrest is for a traffic violation. *United States v.*

[1] The Iowa Supreme Court based its decision in this case on *State v. Doran*, 563 N.W.2d 620 (Iowa 1997), which was decided five months prior to *State v. Knowles*, 569 N.W.2d 601 (Iowa 1997).

Robinson, 414 U.S. 218, 235, 94 S. Ct. 467, 477, 38 L.Ed.2d 427 (1973); *Gustafson v. Florida*, 414 U.S. 260, 265-66, 94 S. Ct. 488, 491-92, 38 L.Ed.2d 456 (1973). "In the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but it is also a 'reasonable' search under that Amendment." *Robinson*, 414 U.S. at 235, 94 S. Ct. at 477. *Robinson* clearly established an officer's authority to search incident to an arrest, but this Court specifically declined to address the issue of whether a search would be permitted where there was only a routine traffic stop and not a full custodial arrest. *Robinson*, 414 U.S. at 235 n.6, 94 S. Ct. at 477 n.6.

The *Robinson* Court explained that the justification behind the search incident to arrest exception rests equally on the need to disarm a suspect as well as the need to preserve evidence to be used at trial. The issuance of a citation, however, does not present the same concerns which support the search incident to arrest.

The need to protect the officer's safety is not as great in the case of a traffic stop as it is in a full custodial arrest:

> It is scarcely open to doubt that the danger to an officer is far greater in the case of the extended exposure which follows the taking of a suspect into custody and transporting him to the police station than in the case of the relatively fleeting contact resulting from the typical *Terry*-type stop. This is an adequate basis for treating all custodial arrests alike for purposes of search justification.

Robinson, 414 U.S. at 234-35, 94 S. Ct. 476.

The crux of this Court's opinion in *Robinson* is that it is the fact of the custodial arrest that gives the officer the authority to search the defendant. *Robinson,* 414 U.S. 15 234-35, 94 S. Ct. at 476. In *Gustafson*, the Court outlined the determinative factors in a search incident to arrest: the officer had probable cause to arrest, he effectuated the arrest, and he placed the defendant in custody. *Gustafson*, 414 U.S. at 265, 94 S. Ct. at 491-92.

Under this exception, an officer who places a person under lawful arrest may search the person and the area within his immediate vicinity as long as the search is reasonable and for the purposes of removing weapons to protect the safety of the officer or to preserve evidence of the crime to prevent its concealment or destruction. *Chimel v. California*, 395 U.S. 752, 762-63, 89 S. Ct. 2034, 2040, 23 L.Ed.2d 685 (1969). The scope of a search incident to arrest when the defendant is in an automobile extends to the entire passenger compartment of the vehicle, including any containers therein. *New York v. Belton*, 453 U.S. 454, 101 S. Ct. 2860, 69 L.Ed.2d 768 (1981).

In *Cupp v. Murphy*, 412 U.S. 291, 296, 93 S. Ct. 2000, 2004, 36 L.Ed.2d 900 (1973), this Court distinguished a traffic stop from an arrest: "[w]here there is no formal arrest . . . a person might well be less hostile to the police and less likely to take conspicuous, immediate steps to destroy incriminating evidence. . . ." Therefore, a full *Chimel* search is not justified without a formal arrest. *Id.* The "detention of a motorist pursuant to a traffic stop is presumptively temporary and brief. The vast majority of detentions last only a few minutes." *Berkemer v. McCarthy*, 468 U.S. 420, 437, 104 S.

Ct. 3138, 3149, 82 L.Ed.2d 317 (1984). For these reasons, the *Berkemer* Court decided that "the usual traffic stop is more analogous to a so-called *Terry*-stop than to a formal arrest," and, therefore, a person detained for a traffic stop is not in custody for purposes of *Miranda*. *Id.* at 439-40, 104 S. Ct. at 3150.

In its rulings in this case and other similar rulings, the Iowa Supreme Court has dispensed with any case-by-case consideration of the facts surrounding the search. As the dissenting opinion in *Knowles* pointed out, "[t]he constitutional reasonableness of a statute that purports to authorize a search that is neither pursuant to warrant, incident to custodial arrest, or based on probable cause simply cannot be decided in the abstract." *Knowles*, 569 N.W.2d at 603 (Neuman, J., dissenting).

2. Conflict Among Jurisdictions

Other state and federal courts contradict the law in Iowa. Arizona has a statute similar to Iowa's statute. Ariz. Rev. Stat. § 13-3903 (1989). This statute states that the police officer may release an arrested person from custody in lieu of taking the person to the police station. *Id.* § 13-3903(A). It also states that "[n]othing in this section shall be construed to affect a peace officer's authority to conduct an otherwise lawful search incident to his arrest even though such arrested person is released before being taken to the police station . . . ." *Id.* § 13-3903(F). Despite this statute, the Arizona Court of Appeals held that police officers could not search a person they observed illegally drinking beer in a city park when they intended only to issue a citation for the offense.

State v. Taylor, 808 P.2d 324, 324-25 (Ariz. Ct. App. 1990), *rev. denied*, 821 P.2d 166 (Ariz. 1991), *cert. denied*, 503 U.S. 998, 112 S. Ct. 1705, 118 L.Ed.2d 413 (1992). That court held that the reasoning in *Robinson* could not apply to a situation where the person is not taken into custody. *Id.* at 324 (citing *Robinson*, 414 U.S. 218, 235, 94 S. Ct. 467, 476, 38 L.Ed.2d 427, 440 (1973); *Gustafson*, 414 U.S. 260, 94 S. Ct. 488, 38 L.Ed.2d 456 (1973)).

The Maryland Court of Appeals addressed the constitutionality of a search of the contents of a vehicle based only on issuance of a citation. In *Daugherty v. State*, 392 A.2d 1165, 1167 (Md. Ct. Spec. App. 1978), the defendant was cited for hunting deer with a firearm in his possession during the closed season. *Id.* The officer detained the defendant and issued the citation while he was walking from the woods to his vehicle. *Id.* The officer then searched the car and found marijuana inside. *Id.* The court stated that the "search of the . . . car without having first obtained a search warrant cannot be justified as a search incident to an arrest. That exception to the warrant requirement encompasses only in-custody arrests." *Id.* (citing *Robinson*, 414 U.S. 218, 94 S. Ct. 467, 38 L.Ed.2d 427 (1973)). The defendant was not taken into custody for the infraction. *Id.*

The Wisconsin Supreme Court held that an officer cannot conduct a warrantless search based on the fact that the defendant could have been arrested, but was not. *State v. Swanson*, 475 N.W.2d 148, 155 (Wis. 1991). In that case, Swanson drove his car onto the sidewalk, nearly hitting a pedestrian. *Id.* at 150. When stopped by police and asked to

exit the car, the officer conducted a pat down search and found a bag of marijuana in Swanson's pocket. *Id.* The court held that Swanson was not under arrest and could not be searched basing its determination on *Berkemer v. McCarthy*, 468 U.S. 420, 104 S. Ct. 3138, 82 L.Ed.2d 317 (1984), where this Court decided that a temporary detention for the purposes of a routine traffic stop is not considered custody for the purposes of *Miranda*. *Id.* at 440, 104 S. Ct. at 3150. The court rejected the argument that Swanson could have been arrested for various traffic offenses: "We require that the State show that an arrest actually took place for something other than possession of a controlled substance. This requirement will ensure that the police do not arbitrarily violate an individual's privacy." *Id.* at 155. The court decided the search should be analyzed under *Terry*, and this search exceeded the scope of a frisk allowed by *Terry*. *Id.* at 155-56; *see Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968).

Many other states have held that the search incident to arrest doctrine requires an actual custodial arrest. The Colorado Supreme Court decided that *Robinson* and *Gustafson* require police to effectuate a full custodial arrest in order to search incident to that arrest. *People v. Bland*, 884 P.2d 312, 317 (Colo. 1994). The court also decided that a temporary detention did not constitute a custodial arrest and therefore no search would be allowed. *Id.* at 318.[2]

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[2] *See also State v. Davis*, 477 So. 2d 504, 506 (Ala. Ct. App. 1985) (Without a lawful custodial arrest, there is no authority for a full search under the search incident to arrest exception.); *Thomas v. State*, 453 So. 2d 1075, 1077 (Ala. Ct. App. 1984) (stating

Contrary to the Iowa Supreme Court, many other state courts require more than a mere traffic violation to justify a search. For example, in numerous cases in Illinois, the courts have decided that when a vehicle is stopped for a minor traffic violation, a search is not justified unless the officer has evidence that a more serous crime has been committed.[3] In Pennsylvania, a vehicle stopped for a traffic violation may not be searched unless there is independent probable cause. *Commonwealth v. Germann*, 621 A.2d 589, 592 (Pa. Super. Ct. 1993); *see also Commonwealth v. Grosso*, 672 A.2d 792, 794 (Pa. Super. Ct. 1996). Courts in Alabama, Colorado, Florida, North Carolina, Ohio, Oregon, and Washington, among other states, have handed down similar opinions.[4]

Some federal courts have also addressed this question. In *United States v. Parr*,

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"the search-incident-to-arrest exception to the warrant requirement arises only when there is a custodial arrest"); *State v. Ledbetter*, 540 P.2d 824, 826 (N.M. Ct. App. 1975) (stating that because the driver was not taken into custody for the driving violation, *Robinson* is not applicable and the search cannot be justified by the search incident to arrest theory); *Linnett v. State*, 647 S.W.2d 672, 674-75 (Tx. Ct. App. 1983) (*Belton* is not applicable unless there is a custodial arrest.).

[3] *People v. Koutsakis*, 649 N.E.2d 605, 608 (Ill. Ct. App. 1995); *People v. Sullivan*, 612 N.E.2d 1000, 1003 (Ill. Ct. App. 1993); *People v. Stewart*, 610 N.E.2d 197, 202 (Ill. Ct. App. 1993); *People v. Innis*, 604 N.E.2d 389, 392 (Ill. Ct. App. 1992); *People v. Harris*, 557 N.E.2d 1277, 1279 (Ill. Ct. App. 1990); *People v. Penny*, 544 N.E.2d 1015, 1017 (Ill. Ct. App. 1989); *People v. Lawrence*, 529 N.E.2d 63, 65 (Ill. Ct. App. 1988); *People v. Corral*, 498 N.E.2d 287, 291 (Ill. Ct. App. 1986).

[4] *State v. Washington*, 623 So. 2d 392, 395 (Ala. Crim. App. 1993); *People v. Meredith*, 763 P.2d 562, 565-66 (Colo. 1988); *Johnson v. State*, 537 So. 2d 117, 119 (Fla. Ct. App. 1988); *State v. Braxton*, 368 S.E.2d 56, 57-59 (N.C. Ct. App. 1988); *State v. Taylor*, 683 N.E.2d 367, 370 (Ohio Ct. App. 1996); *State v. Flores*, 685 P.2d 999, 1005 (Or. Ct. App. 1984); *State v. Henry*, 910 P.2d 1290, 1293 (Wash. Ct. App. 1995).

843 F.2d 1228, 1229 (9th Cir. 1988), the defendant was stopped because the officer suspected his driver's license was suspended. *Id.* The officer asked Parr to exit the vehicle, searched him, and placed him in the patrol car. *Id.* The officer then removed a bag from the car, searched it, and found a "narcotics kit." *Id.* The court determined that Parr was detained, but not under arrest, at the time of the search. *Id.* at 1230. The determinative question was whether the defendant was in custody, because anything less than that would render the search unconstitutional.[5] *Id.* at 1231; *see also United States v. Mota*, 982 F.2d 1384, 1386 (9th Cir. 1993); *United States v. Suarez*, 694 F. Supp. 926, 934 n.6 (S.D. Ga. 1988), *aff'd*, 855 F.2d 1574 (11th Cir. 1989)).

Iowa stands alone in permitting a motor vehicle search based only on issuance of a traffic citation. This author can find no other jurisdiction that has addressed the issue and not condemned the practice.

3. Arbitrary and Discriminatory Enforcement

The Fourth Amendment requires justification, usually in the form of probable cause or reasonable suspicion, before a search is authorized. This justification acts to protect citizens from random and arbitrary governmental intrusion.

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[5] *See United States v. Walker*, 933 F.2d 812, 815 (10th Cir. 1991) (stating a traffic stop is like an investigatory detention, not a custodial arrest, and *Terry* governs); *United States v. Tapia*, 912 F.2d 1367, 1370 (11th Cir. 1990) (stating the decision to detain and search a vehicle is governed by *Terry*); *United States v. Morris*, 910 F. Supp. 1428, 1444 (N.D. Iowa 1995) (stating that if the officer desires to search a vehicle for a purpose unrelated to the traffic stop, the search must be justified under *Terry*).

A blanket authorization to search incident to a traffic citation allows the search of a motor vehicle with no probable cause or reasonable suspicion of any unlawful conduct. Because the police certainly cannot expect to find contraband or evidence relating to the traffic infraction for which the citation is issued, the search is therefore utterly arbitrary.

In addition, since police routinely issue large numbers of traffic citations, two equally intolerable results will occur. Either all motorists will be searched or police will pick and choose which vehicles to search in their unbridled discretion. The most likely scenario is that police will target those individuals who are "profiled" as offenders, i.e., young people, minorities, etc.

Finding a vehicular traffic or equipment violation is easy. Follow any motor vehicle for a few blocks and an infraction of some sort can be observed. Allowing a full-blown search on this basis will allow police in effect to search any vehicle they choose.

Granting a blanket authorization to search incident to citation invites the very mischief that the Fourth Amendment was intended to eradicate. The potential for abuse is only limited by the number of motor vehicles that travel the streets and highways in Iowa.

CONCLUSION

A search such as the one in this case can only be decided on a case-by-case basis, applying *Terry* when there is no custodial arrest. Knowles was not placed under arrest, and there were no circumstances giving rise to any suspicion that Knowles was involved in any criminal activity other than speeding. A routine traffic stop has been distinguished

form a custodial arrest in this Court and many other courts. Iowa's decision to treat them as the same thing cannot satisfy constitutional requirements. There is no support for this decision other than Iowa's statute that purportedly authorizes such searches. The statute authorizes the officer to make an "otherwise lawful search" after issuing a citation, but a search based only on the citation and nothing more is not an otherwise lawful search.

The touchstone of the Fourth Amendment is reasonableness. *Florida v. Jimeno*, 500 U.S. 248, 250, 111 S. Ct. 1801, 1803, 114 L.Ed.2d 297 (1991). "'Nothing is more clear than that the Fourth Amendment was meant to prevent wholesale intrusions upon the personal security of our citizenry, whether these intrusions be termed arrests or investigatory detentions.'" *Cupp v. Murphy*, 412 U.S. at 794, 93 S. Ct. at 2003 (quoting *Davis v. Mississippi*, 394 U.S. 721, 726-27, 89 S. Ct. 1394, 1397, 22 L.Ed.2d 676 (1969)).

If a police officer is given the green light to conduct a full search of motorists and their vehicles every time he or she issues a citation for a minor traffic violation without any further suspicion of criminal activity, it can safely be said that a wholesale intrusion upon the personal security of our citizenry has taken place. If the police officer wishes to conduct a full search of a vehicle, he only has to wait until any traffic violation has occurred, no matter how insignificant. Few drivers would feel secure in their persons and effects if their persons and effects could be the subject of a full search because a brake light or license plate light has gone out.

This unfettered power virtually obviates the need for the *Terry* standard. If,

however, police officers are required to make a custodial arrest of the driver, the officers would be more discerning regarding who they choose to arrest for traffic violations and subsequently search. This encourages a self-imposed check on the extensive power of the police to intrude into our lives. There is no question that the safety of police officers is a valid and important state interest and can be the only state interest advanced to justify a suspicionless search. However, the only way to ensure an officer's safety in every circumstance is to destroy the privacy the Fourth Amendment affords our citizenry.

The Iowa Supreme Court's determination that police, by statute, may automatically search a vehicle when a citation is issued, requiring no suspicion of criminal activity, is a transgression of the Fourth Amendment. The search of Patrick Knowles's vehicle was unlawful and the evidence seized as a result must be suppressed. For these reasons, petitioner respectfully prays the Court grant his Petition and reverse the decision of the Iowa Supreme Court.

PROOF OF SERVICE

On the 20th day of January, 1998, I, the undersigned did serve Petitioner's Writ of Certiorari to the Iowa Supreme Court on all other parties to this appeal by mailing one (1) copy thereof to the following counsel:

Mr. Tom Miller
Attorney General
Criminal Appeals Division
Hoover Building
Des Moines, IA 50309
Telephone: (515) 281-5164

J. Keith Rigg

CERTIFICATE OF FILING

On the 20th day of January, 1998, I the undersigned, did file Petitioner's Writ of Certiorari to the Iowa Supreme Court with the Clerk of United States Supreme Court, by timely mailing, by First Class U.S. mail, pursuant to Supreme Court Rule 12(2) an original and ten (10) copies to said Clerk at the Supreme Court of the United States, One First Street, N.E., Washington D.C. 20543.

J. Keith Rigg

APPENDIX

1. Opinion of the Iowa Supreme Court A-1
2. Ruling on Motion to Suppress A-6
3. Judgment Entries A-8
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IN THE SUPREME COURT OF IOWA

No. 235 / 96-1584

Filed October 22, 1997

FILED
OCT 22 1997
CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

PATRICK KNOWLES,

Appellant.

Appeal from the Iowa District Court for Jasper County, Carol Greta and John P. Crouch, District Associate Judges.

Defendant convicted of possession of a controlled substance and keeping a controlled substance in an automobile appeals, challenging evidentiary rulings allowing evidence of marijuana obtained by a search of his person and automobile incident to the issuance of a traffic citation. **AFFIRMED.**

Maria Ruhtenberg of Paul Rosenberg & Associates, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Steve Johnson, County Attorney, and James Cleverley, Jr., Assistant County Attorney, for appellee.

Considered en banc.

10-2

CARTER, Justice.

Defendant, Patrick Knowles, was convicted of possession of a Schedule I controlled substance (marijuana) in violation of Iowa Code section 124.401(3) (1995) and keeping a controlled substance in an automobile in violation of Iowa Code section 124.401(1)(e). He appeals and challenges evidentiary rulings that allowed evidence of marijuana that had been obtained by a search of his person and automobile incident to the issuance of a traffic citation. Defendant divides his grounds for reversal into four contentions: (1) the lack of probable cause to search under the Fourth Amendment to the federal constitution, (2) the invalidity of a purported statutory grant of authority to search based on the issuance of a traffic citation, (3) the invalidity of a purported authorization for custodial arrest for a speeding violation under the seizure restrictions of the Fourth Amendment to the federal constitution, and (4) that it was unreasonable to detain the defendant after the issuance of the citation had been completed. Because we find the controlling issues of law have been determined adversely to defendant in *State v. Doran*, 563 N.W.2d 620 (Iowa 1997), we affirm the judgment of the district court.

We need not consider defendant's first contention as existing separate and distinct from the second. The State does not contend that there was probable cause to search under the warrant standards of the Fourth Amendment. Defendant was stopped by police for driving at an excessive speed. There were no circumstances indicating that evidence of crime existed on his person or in his automobile. The officer's election to search his person and his car was based solely on the perceived authority to search conferred by Iowa Code section 805.1(4). We thus proceed to the consideration of defendant's contention that this statute is unconstitutional.

We have consistently interpreted section 805.1(4) as providing authority to search when a traffic violation has occurred that would constitute grounds for an arrest. *State v. Meyer*, 543 N.W.2d 876, 879 (Iowa 1996); *State v. Becker*, 458 N.W.2d 604, 607 (Iowa 1990). Defendant does not contest the fact that he was speeding or that there was a statutory basis for arrest. *See* Iowa Code § 804.7. In *Doran* we upheld the authority to search conferred by section 805.1(4) in the face of challenges based on the Fourth Amendment and article I, section 8 of the Iowa Constitution.

Defendant urges us to reconsider our *Doran* holding. He asserts that, because the "search incident to an arrest" exception to the Fourth Amendment is the only constitutional predicate on which the State seeks to support the authority to search his person and automobile, there must have in fact been a custodial arrest to satisfy the limitations on searches imposed by the Fourth Amendment. He urges that our holding in *Doran* that the constitutional basis for the "search incident to an arrest" exception is satisfied by the presence of grounds for arrest rather than the making of a custodial arrest is misguided. We disagree. The suggestion that the constitutional basis for the "search incident to an arrest" exception is an actual arrest is belied by those decisions that hold that the timing of the arrest need not precede the search. *See State v. Peterson*, 515 N.W.2d 23, 25 (Iowa 1994); *State v. Beatty*, 305 N.W.2d 496, 498 (Iowa 1981). And, when the search produces an independent ground for an arrest on a more serious charge, the foregoing of an arrest for the traffic violation does not defeat the authority to search. *See People v. Rossi*, 102 Ill. App. 3d 1069, 1073, 430 N.E.2d 233, 236 (1981).

We are satisfied that our decision in *Doran* properly identified the public policy reasons that support the "search incident to an arrest" exception when grounds for a legal arrest are present. When an officer has a legal basis to make

a custodial arrest and thereby acquires grounds for searching a suspect's person or automobile in the absence of probable cause, an election by the officer to pursue a lesser intrusion, such as issuing a citation, may be conditioned on certain aspects of detention and search that are conducive to the officer's safety. Based on those considerations, the legislature's grant of the authority to search provided in section 805.1(4) does not offend against the Fourth Amendment.

Defendant's third point, which suggests that the statutory authorization for a custodial arrest on a speeding charge is an unlawful authorization of an illegal seizure of the person under the Fourth Amendment, was not raised in the motion to suppress before the district court and thus may not be considered by us. His argument that he was unreasonably detained following the issuance of the citation must be rejected because the further detention was for purposes of making a search that has now been determined to be lawful. We have considered all issues presented and conclude that the judgment of the district court should be affirmed.

AFFIRMED.

All justices concur except Neuman, Lavorato, Snell, and Ternus, JJ., who dissent.

NEUMAN, Justice (dissenting).

For the reasons expressed in my dissent to *State v. Doran*, 563 N.W.2d 620, 623 (Iowa 1997) (Neuman, J., dissenting), I cannot join the majority opinion. The constitutional reasonableness of a statute that purports to authorize a search that is neither pursuant to warrant, incident to custodial arrest, or based on probable cause simply cannot be decided in the abstract. The validity of such a search is "pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case." *Sibron v. New York*, 392 U.S. 40, 59, 88 S. Ct. 1889, 1901, 20 L. Ed. 2d 917, 932 (1968). The United States Supreme Court has never departed from this principle and neither, I respectfully suggest, should we.

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

STATE OF IOWA,	:	Nos. AGCR2757, SRCR2758
Plaintiff,	:	
vs.	:	
PATRICK GEORGE KNOWLES,	:	RULING ON MOTION TO SUPPRESS
Defendant.	:	

This matter came on for hearing before the Court on the Defendant's motion to suppress evidence. The Defendant appeared personally with his attorney, Maria Ruhtenberg. The State was represented by Assistant Jasper County Attorney, James Cleverley.

Testimony was taken from one witness, Newton Police Officer Ron Cook, who issued a citation in lieu of arrest to the Defendant for speeding. The facts are undisputed. Officer Cook stopped the Defendant's motor vehicle early in the evening of March 9, 1996. After issuing the speeding citation, Officer Cook searched the Defendant's vehicle incident to the citation and found a quantity of marijuana in the vehicle.

The sole purpose of the stop was to issue a speeding citation. After ascertaining the identity of the Defendant, who was the sole occupant of the motor vehicle, Officer Cook stated that he recognized the Defendant as having prior involvement with possession of controlled substances and drug paraphernalia. However, Officer Cook also testified that he observed nothing in the course of the stop that make him suspicious of the Defendant or his activities. Therefore, both parties agree that justification of the search in question must succeed or fail

solely as a search incident to the issuance of the speeding citation.

The Defendant concedes that the Iowa Supreme Court has on two occasions ruled that a search incident to a citation is tantamount to a search incident to an arrest. State v. Cook, 530 N.W.2d 728 (Iowa 1995); State v. Meyer, 543 N.W.2d 876 (Iowa 1996). In both cases the high court reasoned that because the officer could have arrested the defendant under Iowa law instead of issuing a citation and could have conducted a search incident to such arrest, then the officer could search incident to a citation.

The Defendant argues that the supreme court did not consider in either Cook or Meyer the constitutional implications of Iowa Code §805.1(4) (1995), which states that "[t]he issuance of a citation in lieu of arrest . . . does not affect the officer's authority to conduct an otherwise lawful search." However, in both of those cases, the court stated that its review was de novo because constitutional issues were at stake, indicating that the supreme court was well aware of the tension created by the statute vis-a-vis the fourth amendment.

This Court, having no basis on which to grant the Defendant's motion to suppress, DENIES the same.

Maria Ruhtenberg

PROOF OF SERVICE
... above cause by depositing ... postage prepaid, in envelopes ... of record herein at their respective addresses ... on the ... day of ... 19 ...

Carol Nowell
Judge, 5th Judicial District

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

STATE OF IOWA, Plaintiff,	:	SR CR002758
vs.	:	JUDGMENT ENTRY
PATRICK GEORGE KNOWLES, Defendant.	:	

FILED
96 SEP 10 AM 8:13
CLERK OF DISTRICT COURT

BE IT REMEMBERED that on the 9th day of September, 1996, the State appeared in open Court by James W. Cleverley, Assistant Jasper County Attorney, and the defendant appeared in person and with his Attorney Maria Ruhtenberg, for sentencing.

IT IS THEREFORE ORDERED AND ADJUDGED that the defendant is guilty of the offense of possession of a Schedule I Controlled Substance, to wit: marijuana in violation of Section 124.401(3), Code of Iowa, and that he/she is hereby sentenced to a fine in the amount of $250.00 plus the 30% surcharge, together with interest as by law provided, and ninety (90) days in the Jasper County Jail; that said sentence shall run concurrent with SR CR002757, but not to commence until after the defendant has served his sentence in FE CR002697.

Any appearance bond heretofore posted by the defendant shall be released and any sureties thereon exonerated.

Costs of this action are assessed against the defendant, including restitution of his Court appointed attorney fees.

Bond on appeal is hereby set at $500.00.

Judge, Fifth Judicial District
of Iowa

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

STATE OF IOWA, Plaintiff,	:	AG CR002757
vs.	:	JUDGMENT ENTRY
PATRICK GEORGE KNOWLES, Defendant.	:	

FILED
96 SEP 10 AM 8:13
CLERK OF DISTRICT COURT

BE IT REMEMBERED that on the 9th day of September, 1996, the State appeared in open Court by James W. Cleverley, Assistant Jasper County Attorney, and the defendant appeared in person and with his Attorney Maria Ruhtenberg, for sentencing.

IT IS THEREFORE ORDERED AND ADJUDGED that the defendant is guilty of the offense of prohibited acts by a registratnt, keeping a controlled substance, to wit: marijuana in a motor vehicle in violation of Section 124.401(1)(e), Code of Iowa, and that he/she is hereby sentenced to a fine in the amount of $500.00 plus the 30% surcharge, together with interest as by law provided, and ninety (90) days in the Jasper County Jail; that said sentence shall run concurrent with SR CR002758, but not to commence until after the defendant has served his sentence in FE CR002697.

Any appearance bond heretofore posted by the defendant shall be released and any sureties thereon exonerated.

Costs of this action are assessed against the defendant, including restitution of his Court appointed attorney fees.

Bond on appeal is hereby set at $500.00.

Judge, Fifth Judicial District
of Iowa

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

STATE OF IOWA, Plaintiff, vs. PATRICK KNOWLES, Defendant.	)	**Criminal No. SRCR2758** **SRCR2757** **DEFENDANT'S MOTION TO SUPPRESS**

The defendant, Patrick George Knowles, moves this Court to suppress evidence seized in violation of the United States Constitution and states the following in support:

1. On March 9, 1996, the defendant was stopped for speeding while driving in Newton, Iowa.

2. The officer issued the defendant a traffic citation for the speeding violation after determining that the defendant had a valid driver's license and no outstanding arrest warrants.

3. The officer then requested the defendant to exit the car, and the officer searched the defendant and his car.

4. During the search, the officer found what he believed to be marijuana under the driver's seat.

5. On May 2, 1996, a trial information was filed charging the defendant with Possession of a Schedule I Controlled Substance in violation of Iowa Code § 124.401(3) (Case No. CR 2758). On the same date, another trial information was filed charging the defendant with Prohibited Acts by a Registrant, Keeping a Controlled Substance in violation of Iowa Code § 124.402(1)(3) (Case No. CR 2757). Both of these charges arose from the search of the defendant's car and the seizure of the marijuana.

6. The officer did not have probable cause to search the defendant's car, nor did he obtain a search warrant.

7. The officer stated in his report that the search was conducted "incident to citation."

8. No such exception to the warrant requirement exists under the Fourth Amendment to the Constitution.

9. Because the officer had no probable cause and no search warrant, and the search cannot otherwise be justified under the Fourth Amendment, the search of the car was unconstitutional, and the marijuana seized during the search must be suppressed.

10. In addition, when the officer issued the citation to the defendant, the officer had effectuated the purpose of the stop, and the further detention to search was without probable cause and unreasonable and therefore unconstitutional under the Fourth Amendment.

WHEREFORE, the defendant respectfully requests this Court suppress the marijuana unconstitutionally seized from the defendant's car.

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By: Maria Ruhtenberg
Maria Ruhtenberg (PK0014905)
ATTORNEY FOR DEFENDANT

Copy to:
Christine Brandstad; Jasper County Attorney's Office, 301 Courthouse, 100 1st St. N., Newton, IA 50208
Patrick Knowles, Jasper County Jail; 115 N. 2nd E; Newton, IA 50208

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

STATE OF IOWA, Plaintiff,	)	CRIMINAL NOS. AGCR002757 SRCR002758
vs.	)	
PATRICK GEORGE KNOWLES, Defendant.	)	TRANSCRIPT OF PROCEEDINGS

THE ABOVE-ENTITLED MATTER came on for hearing before the Honorable Carol Greta, Judge, at 2:46 p.m., June 26, 1996, at the Jasper County Courthouse in the City of Newton, Jasper County, Iowa.

A P P E A R A N C E S

James Cleverley, Jr., Assistant County Attorney, Jasper County Courthouse, 100 First Street North, Newton, Iowa 50208, counsel for the State of Iowa.

Maria Ruhtenberg, Attorney at Law, 601 Locust Street, Suite 1022, Des Moines, Iowa 50309, counsel for the Defendant.

Jacqueline D. Veatch, CSR, RPR
307 North I Street
Indianola, Iowa 50125

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P R O C E E D I N G S

THE COURT: Madam reporter, this is in Cause Nos. SRCR002758 and AGCR002757. Both of them are entitled State of Iowa vs. Patrick George Knowles. Mr. Knowles does appear personally for the purpose of a Motion to Suppress Evidence with his attorney, is it pronounced Maria Ruhtenberg?

MS. RUHTENBERG: That's right, Your Honor.

THE COURT: And the State of Iowa is represented by Assistant Jasper County Attorney, James Cleverley, Jr. Mr. Cleverley, are you ready to proceed?

MR. CLEVERLEY: Yes, Your Honor.

THE COURT: Ms. Ruhtenberg, are you ready to proceed?

MS. RUHTENBERG: Yes, Your Honor.

THE COURT: Will there be any evidence taken?

MR. CLEVERLEY: Yes, we would call Officer Cook.

THE COURT: And before you step up, Mr. Cook, will there be any witnesses on behalf of the defendant?

MS. RUHTENBERG: No, Your Honor. Officer Cook is the only one.

THE COURT: Officer Cook, why don't you come forward to be sworn.

OFFICER RONALD J. COOK,

called as a witness by the State, being first duly sworn by the Court, was examined and testified as follows:

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. CLEVERLEY:

Q. Could you please state your name.

A. Ronald J. Cook.

Q. How are you employed?

A. I'm a police officer with the City of Newton.

Q. How long have you been a police officer for the City of Newton?

A. Since November 1992.

Q. And on March 9th of 1996, were you employed as a police officer?

A. Yes, sir, I was.

Q. And you're a certified peace officer?

A. Yes, sir, I am.

Q. You have the authority to write and issue citations; is that correct?

A. Yes, sir, I do.

Q. Now, on March 9th of 1996, did you have an occasion to come into contact with a Mr. Patrick George Knowles?

A. Yes, sir, I did.

Q. And where was that contact first made?

A. Would have been in the -- approximately the 300 block of East 12th Street South.

Q. And what brought your attention to either Mr. Knowles or to the vehicle he was in?

A. I was going northbound on East 12th Street South from South Fifth Avenue when I observed a vehicle approaching at a high rate of speed going southbound on East 12th.

Q. And did you make a determination of the speed of the vehicle at that time?

A. Yes, sir, I had a good Doppler tone on the radar and reading of 43.

Q. Prior to activating the radar, had you made any independent observation of your own as to what the speed of that vehicle might be?

A. Just that it was going in excess of 25 miles an hour.

Q. And so the radar readout showed 43, and this is a 25 mile an hour speed zone; is that correct?

A. Yes, sir.

Q. What did you do then after getting the radar reading?

A. I waited until the vehicle passed me, and I pulled into a drive to turn around to catch up to the

vehicle.

Q. And at the time that you observed this vehicle and made the radar clocking of it, did you know who was operating that vehicle?

A. No, sir.

Q. When did you discover who the operator of that vehicle was?

A. After I stopped the vehicle, I approached the driver, and he was identified, and I recognized him as Patrick Knowles.

Q. What was the purpose of stopping that vehicle?

A. For speeding.

Q. And did you know Mr. Patrick Knowles after you had stopped the vehicle?

A. Yes, sir.

Q. And prior to stopping the vehicle, what were your intentions to do?

A. Write a speeding citation.

Q. Did you indeed write one?

A. Yes, sir, I did.

Q. And what was that for?

A. 43 miles an hour in a 25 mile an hour zone.

Q. As a law enforcement officer, do you have the authority to arrest people and place them in jail for such a charge?

A. Yes, I do.
Q. And did you choose to do that on this evening?
A. No, I opted to cite in lieu of arrest.
Q. And do you have a copy of that ticket or citation?
A. I don't personally, no.
Q. But you did issue a uniform Iowa citation; is that correct?
A. Yes, sir, that's correct.
Q. And Mr. Patrick Knowles was the driver of that vehicle?
A. Yes, sir, he was.
Q. Was he the sole passenger of the vehicle?
A. Yes, sir, he was.
Q. And are you familiar with Mr. Knowles?
A. Yes, sir, I am.
Q. How are you familiar with Mr. Knowles?
A. Through the drug task force.
Q. And what do you know about Mr. Knowles or what -- yeah, what do you know about Mr. Knowles?
A. I know that he's had problems with paraphernalia and controlled substances in the past.
Q. And did you say anything to Mr. Knowles regarding the search of his vehicle?
A. I just told him that after I issued him a

citation that I had a right to search his person and his vehicle.
Q. Did you ask to search his vehicle?
A. No, sir, I did not.
Q. Did you just go ahead and search it incident to the citation?
A. Yes, sir.
Q. And did Mr. Knowles object to the search of his vehicle?
A. No, I don't believe that he did.
Q. At any time did he consent to the search of his vehicle?
A. No, sir, he did not.
Q. After searching that vehicle, what did you discover?
A. Underneath the driver's seat, I found two cotton gloves. One of them contained a bone, or antler, pot pipe. The other one contained two plastic baggies; one of which was empty, and one of which contained a green plant material.
Q. Why was it that you searched this vehicle?
A. Because I'd issued a citation.
Q. Was it also based on the fact of your prior knowledge of the type of behavior or criminal activity that Mr. Knowles had been involved in?

A. Yes, sir.

Q. And all those events occurred in Jasper County, Iowa?

A. Yes, sir, they did.

Q. Is Mr. Knowles present here today?

A. Yes, sir, he's wearing a white T-shirt.

MR. CLEVERLEY: I have nothing further.

THE COURT: Cross-examination.

MS. RUHTENBERG: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. RUHTENBERG:

Q. Officer Cook, after you stopped Mr. Knowles for speeding, did you run a check on his license?

A. Yes, ma'am, I did.

Q. Okay. Did you obtain a license and registration from Mr. Knowles?

A. I obtained his license. I don't believe I took his registration.

Q. And after you took his license, what did you do?

A. I went back to my vehicle to start writing out a summons, and I also did the check through the computer system on his driver's license.

Q. What did you discover through that check on his driver's license?

A. That he had a valid driver's license, and he had

no outstanding warrants -- arrest warrants.

Q. What did you do after that?

A. I issued -- I wrote up the citation and waited for Officer Springer to come to my location to assist me, then went back up to Mr. Knowles's vehicle, issued him the citation, and explained to him that I had a right to search him and his vehicle incident to the citation.

Q. Did you have any other suspicion that he was at that moment involved in any drug activity?

A. Other than my past knowledge of Mr. Knowles, no.

Q. Anything you observed lead you to believe or give you probable cause to believe that he was involved in criminal activity?

A. Not on this date, no.

Q. Was it your feeling that your knowledge of his past problems or your past knowledge of Mr. Knowles, did that give you probable cause to search his vehicle?

A. No, the speeding gave me probable cause to search the vehicle.

Q. And that's what you were thinking at the time of the stop?

A. Yes, ma'am.

Q. Did you physically hand the citation to Mr. Knowles prior to stopping him -- I mean, prior to asking him to exit the car?

A. I don't know if I handed it to him before he got out of the car or after he was standing outside the car.

Q. Was the search of his vehicle and of his person conducted after he received the copy of the citation?

A. Yes, ma'am.

Q. You did stop him for speeding?

A. Yes, ma'am.

Q. At that point when you issue a citation to a person after speeding, have you effectuated the purpose of your stop?

A. Have I finished my stop?

Q. Yes.

A. Yes, ma'am.

Q. Did you need, at that point, to obtain any further evidence of speeding?

A. Not of speeding, no.

Q. It was your understanding that simply because you had issued him a citation that that gave you the right -- without any further probable cause gave you the right to search him and his vehicle?

A. Yes, ma'am.

MS. RUHTENBERG: Okay. I don't have any further questions. Thanks.

THE COURT: Redirect.

MR. CLEVERLEY: Nothing, thank you.

THE COURT: May this witness be excused?

MR. CLEVERLEY: Yes.

MS. RUHTENBERG: Yes.

MR. CLEVERLEY: We'd rest.

THE COURT: And the defendant has no evidence?

MS. RUHTENBERG: No, Your Honor.

THE COURT: Would you like your arguments to be reported?

MS. RUHTENBERG: Yes, Your Honor.

THE COURT: Mr. Cleverley.

MR. CLEVERLEY: Thank you, Your Honor. I think the sole purpose of the search here is what's come to be known as State v. Cook, some of the issues set forth in there and Meyer. I think there was no indication as to who this individual was at first. The vehicle was caught speeding, that this officer is a certified peace officer. Under Iowa law he does have the authority to arrest people for speeding. He advised the defendant he was going to search incident to a citation, he issued that citation, and then conducted the search. And I believe under the current state of law in Iowa, an officer does have the right to search incident to a citation. I think that the fact that Officer Cook did know of the background of the individual gives a little more credence to his search, but I believe the Court has to look for the real reason of the search and

that was because of the citation in searching it.

THE COURT: Thank you, Mr. Cleverley.

Ms. Ruhtenberg.

MS. RUHTENBERG: Thank you, Your Honor. I believe our arguments are pretty much stated in the brief given to the Court and to the county attorney's office. I'll summarize. Briefly, I believe that State v. Cook and State v. Meyer can be distinguished in this case, primarily because neither one of those cases address the issue under the Fourth Amendment of a search incident to a citation. I cite the Iowa Code section which allows an officer to issue a citation in lieu of an arrest, and the fact that the Iowa Code Section 805.1(4) says that a citation issued in lieu of arrest does not affect the officer's authority to conduct an otherwise lawful search, as a statutory provision which has been interpreted by the Iowa Supreme Court to allow citation -- or search incident to a citation just as a search incident to an arrest but that is not in either case decided, Your Honor, by the Fourth Amendment. And this search incident to a citation is distinguishable from a search incident to an arrest under the Fourth Amendment. It does not fit into the parameters that the Supreme Court has forever laid down for the purpose of the search incident to an arrest. For instance, in the search incident to arrest, for the purpose being to protect the

officer from any danger, the second one being to preserve evidence. Neither one of those issues are present in a search incident to a citation. Once the officer issues the citation, the defendant should be free to leave. He's not in any danger. The United States Supreme Court cases say that an officer is not in as much fleeting authority with every short contact with a defendant, unlike where the person is arrested and the officer has extended exposure. Second of all, once the citation is issued, the officer has no need for further evidence of speeding. The only reason for any further search is sort of a fishing expedition to find other criminal activities simply because he had suspicion because of Mr. Knowles's reputation or other prior criminal history that he might be involved in drugs. This is a synopsis of our argument as to why Cook and Meyer do not apply here.

Second argument if the Court does not buy that is that the Iowa Code Section 805.1(4) is unconstitutional to the extent that it does allow a search incident to citation. For the same reasons I've just discussed, it does not fit within the Fourth Amendment guidelines for search in this situation.

And our last issue besides is that after the officer stops Mr. Knowles for speeding, ran the check, saw that he was not wanted on any arrest warrants, he was

validly driving his car with a valid Iowa driver's license, and issued him the citation, he effectuated the purpose of the stop. The United States Supreme Court has stated that an officer may detain a suspect only for a reasonable amount of time to confirm or dispel suspicions. He is only allowed to detain a suspect for the amount of time to effectuate the purpose of the stop, anything after that -- further detention is unreasonable under the Fourth Amendment and therefore unconstitutional. For all those reasons, we would ask that the Court suppress the evidence during the search of his car. Thank you.

THE COURT: Thank you, Ms. Ruhtenberg. What do you say to this Court's position that if we take your argument to its logical conclusion and if indeed an appellate court agrees with you, then arresting officers are simply going to stop issuing citations in lieu of arrest and arrest everybody?

MS. RUHTENBERG: Well, Your Honor, I think there's just as much danger the other way, that everybody who gets stopped for a seat belt or for a light out can be issued a citation, and probably is usually issued a citation, and everybody's car can be search, and they can be detained for however long that lasts. And I think that's as much of a danger. I believe that we should predetermine the validity of searches based on the -- what

actually happens, and if the officer actually arrests people, then they can search the vehicle. But I think under the Fourth Amendment analysis, I think you're right. That would give the officers more initiative to arrest people, but I also believe, Your Honor, the search incident to citation doesn't fit.

THE COURT: There's no dispute or argument in this case, is there, that this defendant was detained unduly long, is there? There's nothing in the record before me anyway, that there's no factual record showing that Mr. Knowles was detained for X number of minutes. You're not making an argument based on that, are you?

MS. RUHTENBERG: Well, Your Honor, I'm making argument that any detention after the citation was issued was unreasonable, so if you want -- that's one of my arguments.

THE COURT: But you would agree with me that there is no evidence as to how long that time was, whether it was one minute or one hour.

MS. RUHTENBERG: Right.

THE COURT: All right. Thank you. Counsel, you make very good arguments, but I'm afraid this Court believes that the Supreme Court stated in both the Cook and Meyer cases that the constitutional issues were before that court because they stated in both of those cases that their

review was de novo because they were presented with constitutional issues. And, in fact, the district court in the Meyer case did what you asked, Ms. Ruhtenberg, and granted the Motion to Suppress, and the Supreme Court overruled that district court. I'm not going to follow that path, frankly, counsel. I'm going to deny your Motion to Suppress, and that will be the Order of the Court.

MS. RUHTENBERG: Thank you, Your Honor.

MR. CLEVERLEY: Thank you, Your Honor.

(This matter concluded at 3:04 p.m.)

CERTIFICATE OF SHORTHAND REPORTER

I, Jackie D. Veatch, Certified Shorthand Reporter in and for the State of Iowa, do hereby certify that at the time and place as indicated on Page 1, I took in shorthand the testimony presented and later reduced to typewriting the foregoing typewritten pages and that said transcript is a true and accurate record of the notes so taken.

Dated this 27th day of September, 1996.

Jackie D. Veatch

JACKIE D. VEATCH, CSR, RPR

Transcript Ordered: September 12, 1996

Transcript Ordered By: Maria Ruhtenberg

Transcript Delivered: September 27, 1996

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 96-1584

STATE OF IOWA,

Plaintiff-Appellee,

vs.

PATRICK KNOWLES,

Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT,
JASPER COUNTY
THE HONORABLE CAROL GRETA
AND THE HONORABLE JOHN CROUCH, JUDGES

APPELLANT'S BRIEF
AND
REQUEST FOR ORAL ARGUMENT

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ATTORNEYS FOR DEFENDANT-APPELLANT

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. THE SEARCH OF PATRICK KNOWLES'S VEHICLE BASED SOLELY ON ISSUANCE OF A ROUTINE TRAFFIC CITATION IS AN UNREASONABLE SEARCH REQUIRING SUPPRESSION OF EVIDENCE SUPPORTING HIS CONVICTION

Cases

Adams v. State, 634 S.W.2d 785, 798 (Tx. Ct. App. 1982)
Berkemer v. McCarthy, 468 U.S. 420, 437, 104 S. Ct. 3138, 3149, 82 L.Ed.2d 317 (1984)
Castle v. State, 476 N.E.2d 522, 524 (Ind. Ct. App. 1985)
Chimel v. California, 395 U.S. 752, 762-63, 89 S. Ct. 2034, 2040, 23 L.Ed.2d 685 (1969)
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State v. Cook, 530 N.W.2d 728 (Iowa 1995)
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United States v. Tapia, 912 F.2d 1367, 1370 (11th Cir. 1990)
United States v. Walker, 933 F.2d 812, 815 (10th Cir. 1991)

Weeks v. United States, 232 U.S. 383, 392, 34 S. Ct. 341, 344, 58 L.Ed. 652 (1914)

Statutes
Iowa Code § 804.5 (1995)

Miscellaneous
U. S. Constitution, Fourth Amendment

II. IOWA CODE SECTION 805.1(4) IS UNCONSTITUTIONAL TO THE EXTENT IT AUTHORIZES A SEARCH INCIDENT TO A TRAFFIC CITATION

Cases
Almeida-Sanchez v. United States, 413 U.S. 266, 272, 93 S. Ct. 2535, 2539, 37 L.Ed.2d 596 (1973)
Reynolds v. Iowa Dept. of Human Serv., 493 N.W.2d 813, 815 (Iowa 1992)
Sibron v. New York, 392 U.S. 40, 60-61, 88 S. Ct. 1889, 1901-02 (1968)
State v. Cook, 530 N.W.2d 728 (Iowa 1995)
State v. Meyer, 543 N.W.2d 876 (Iowa 1996)

Statutes
Iowa Code § 805.1 (1995)
Iowa Code § 805.1(4) (1995)

III. THE DETENTION OF PATRICK KNOWLES FOLLOWING THE ISSUANCE OF A CITATION WAS UNREASONABLE AND ANY EVIDENCE OBTAINED THEREFROM SHOULD HAVE BEEN SUPPRESSED.

Cases
United States v. Ramos, 42 F.3d 1160, 1163 (8th Cir. 1994)
United States v. Sharpe, 470 U.S. 675, 105 S. Ct. 1568, 84 L.Ed.2d 605 (1985)
United States v. Williams, 714 F.2d 777, 781 (8th Cir. 1983)